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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,796	12/20/2001	Mark S. Franke	KCC-16,487	9402

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,796

Applicant(s)

FRANKE ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 14 and 19-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12, 13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group 1 and the species of Figure 4B in Paper No. 8 is acknowledged.

2. Claims 10-11 and 19-37 as well as claims 9 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claims 9 and 14 were also withdrawn as these claims were drawn to features not shown in the elected species of Figure 4B, i.e. Figure 4B does not show a standing seam but one that has been folded over and no tearable structure is shown either.

The restriction and election are deemed proper and made FINAL.

Specification

Drawings

3. The formal drawings filed 3-26-03 have been placed in the file but approval thereof is held in abeyance until the issues discussed infra with respect to the Figures have been resolved.

4. The drawings are objected to because Figure 4A should be labeled "PRIOR ART", see page 4, line 12. In Figure 4B the lines from 53-54, 56 and 58 should be dashed to denote underlying structure. In Figure 4B, 86 should be shown attached to the portion of 134 to the left thereof. This also applies to 82 in Figure 5 and 86 in Figure 8. In Figure 6A, 84 should be 82.

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In Figure 6B, 86 is not shown accurately. This also applies to Figure 10. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

6. The use of the trademark LYCRA(R)(page 18, line 6), AHCOVEL(R)(page 20, line 18) and GLUCOPON(R)(page 20, line 18) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown in all capitals or with a symbol but not both.

7. The disclosure is objected to because of the following informalities: In the Figures, Figure 6B, what is 88? In the Definitions section is the definition of "side seam" accurate? Note it is used in the claims but the invention set forth, e.g., claim 1 is a personal care garment not a prefastened pant-like disposable garment as defined by the term "side seam". Also connecting a front panel to a back panel will not form a prefastened pant-like garment, i.e. need fastening of side panels on both sides. Appropriate correction is required.

Claim Objections

8. Claim 13 is objected to because of the following informalities: on line 1, “absorbent” should be --personal care--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 1-8 and 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims define a personal care garment with a side seam but as discussed “side seam” as defined in the specification defines a disposable, prefastened pant-like garment. Therefore it is unclear whether the claim requires disposability and pant-like shape or not.

Claim Language Interpretation

10. “Bonded” and “connected” are defined as set forth on page 5, lines 16 et seq. and page 6, lines 1-2. “Disposable” is defined as set forth on page 6, lines 7-8. “Ribbon cover” is defined as set forth on page 11, lines 10-12. “Elastic” is defined as set forth on page 6, lines 10-14. “Disposable article”, “absorbent garment”, and “personal care garment” are defined as set forth on page 13, line 19-page 14, line 1. The terminology “side seam” due to the lack of clarity as discussed supra will be interpreted according to its customary, i.e. dictionary definition, in light of the specification, i.e. a seam at the side.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4, 7-8, 12-13, 15-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al '637.

With regard to claims 1-4, 12-13 and 15-16: See title, abstract, Figures 3-5A, line between 18a and 18b and side edge of seam, col. 7, line 9- col. 8, line 20 (and thus '846, Figures 1-3, and '681 at col. 6, lines 25-35, 3/16" seam is about 5mm), col. 15, line 64- col. 16, line 56, i.e. garment is 20, front region is 56, rear region is 58, crotch region is 57, side panels are adjacent 62 and include elastomeric lamina 47, side seams are 10, ribbon cover is 18 or 18a or 18b, ribbon covers are 18a and 18b.

With regard to claims 7 and 18: see Figures, e.g. seam is 5 mm and cover 18b extends width of seam and then across the entire back region.

With regard to claim 8: See line between 18a and 18b which is coincident to a side seam in Figure 5 and also see 18 in Figures 3-4, e.g. cover 18b coincident with a side edge of seam so extends 0mm beyond such edge in the direction of the front region.

13. Claims 1, 12-13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosch et al '394.

With regard to claims 1, 12-13, and 15-17: See title, Figures 2, 4, 6, col. 2, lines 36-41 (and thus '757, col. 5, lines 28-29), col. 2, lines 50-53, col. 3, line 65-col. 4, line 4, col. 4, lines

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13-50, col. 4, line 59- col. 5, line 39, col. 5, line 61-col. 6, line 5, col. 6, lines 38-54, col. 9, line 31-col. 10, line 56, col. 4, lines 3-4, i.e. garment is 10, front region is 20, rear region is 22, crotch is 24, side panels are 26-28 which comprise elastic material, side seams are 44, 46, ribbon cover is 14, 94 or 96, ribbon covers are 94 and 96 and the ribbon covers comprise elastic material.

With regard to claim 18: see Figures, i.e. 94 and 96 wider than a width of the side seam. It is noted that the claims do not require each ribbon cover to cover the entire associated seam by itself.

Allowable Subject Matter

14. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and overcoming any formal matters noted supra.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows various seam configurations.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

K M Reichle
Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR